

REMARKS

Although applicant does not agree with the Examiner's objection to the original declaration, applicant is enclosing a substitute declaration so that the application will be quickly allowed.

Claims 1-6 were rejected under the judicially created doctrine of obviousness double patenting. Applicant is submitting an appropriate terminal disclaimer and requests that the rejection be withdrawn.

Claims 3, 5, and 6 were indicated as being allowable but objected to for being based on a rejected claim. Claims 3 and 5 have been amended to be independent and are now in condition for allowance. Claim 6 is dependent on allowed claim 5. Therefore it is requested that the objection be withdrawn.

Claims 1, 2, and 4 were rejected under 35 U.S.C. 103(a) over Ikeda et al. The Examiner correctly states that Ikeda does not disclose

1. That the major axis has a length greater than the minor axis (claims 1, 2, and 4).

The above distinction is not disclosed nor are there any suggestions that such a spline should be so constructed. The prior art must suggest the changes and reasons for the changes. The suggestions can not come from applicant's application.

As set forth in *In re Kotzab*, 55 USPQ2d 1313, the CAFC stated substantial evidence is needed to support an obvious analysis. "Most, if not all inventions arise from a combination of old elements...Thus, every element of a claimed invention may often be found in the prior art." to establish obviousness...there must be some motivation, suggestion or teaching of the desirability of making the specific combination that was made by the appellant."

Further, the prior art does not suggest what substitutions should be made to arrive at appellant's invention. The suggestions are made by the Examiner, after reading applicant's invention, and not the prior art. As noted above this can not be the basis for refusing a patent - as set forth by the CAFC in *In re Kotzab*, 55 USPQ2d 1313.

The Examiner states that he recognizes that "obviousness can only be established by modifying the teachings of the prior art... if there is some teaching, suggestion, or motivation to do so found in the references themselves..." To support this, the Examiner cited the following from Ikeda to state that Ikeda teaches using a spline for a twisted pair cable having a major axis with a length greater than the minor axis

"...equivalent results are obtained even if the cross section is square or polygonal for the spacer shape."

This statement by Ikeda does not support a teaching of an oval spline or spacer. Rather this statement only supports using a variation of a circle - that is, a square or a polygon. Ikeda does not suggest an oval shape because Ikeda does not recognize or teach the advantages of an oval shape with for a plurality of twisted pairs as is taught by Applicant.

The advantages of Applicant's cable include:

- (1) Maximum cable separation in trays for reduced alien cross talk at higher frequencies;
- (2) Equalizing attenuation differences between the longest and shortest pair lengths in the cable by optimally orientating the long and short lay length pairs: Optimization occurs by having the long lay pairs on the "major" axis and short lay pairs on the "minor" axis. The

major axis increases the amount of long pair lay UTP's in the cable and the minor axis decreases the amount of short pair lay UTP's in the cable;

(3) Reducing cross talk by having the longest pair lays being separated along the major spline's axis and the short lay pairs located along the minor-cable axis;

(4) Reducing attenuation by reducing contact between short lay twisted pairs and the outer jacket: By placing the short lay pairs along the minor axis of the cables, less jacket material is in contact with the short lay pairs. The longer lay pairs, which have the benefit of shorter conductor lengths, are placed along the major axis where a greater degree of cable jacket contact takes place;

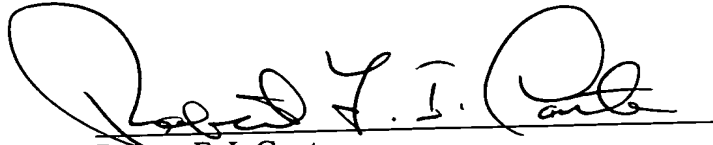
(5) Reducing SKEW, or the first to last signal arrival time differential, with any given lay set. Reduced SKEW occurs because the dual cabling axis (major axis and minor axis) places more conductors per unit length along the long lay pairs to help equalize the amount of wire relative to the short lay pairs during overall cabling. Conversely, the short lay pairs are placed across the minor axis to reduce the amount of wire added during the overall cable operation;

(6) Reducing the conductor diameter previously associated with longer pair lays, while achieving the same level of NEXT and attenuation previously only achievable through "larger" conductor diameters.

Ikeda discloses that his spline does not have a major axis with a length greater than the minor axis. Ikeda only shows that all pockets are the same size and does not recognize the advantages of an oval spline as stated above and therefore does not suggest such.

It is respectfully submitted that the application is now in condition for allowance and it requested that the rejection of claims 1, 2, and 4 be withdrawn and a notice of allowance issued.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Robert F. I. Conte", written over a horizontal line.

Robert F. I. Conte
Barnes & Thornburg
Suite 4500
One North Wacker Drive
Chicago, IL 60606
Phone: 312-214-4804
Facsimile: 312-759-5646

Attorney for Applicant
Registration No.: 20,354